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SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT

to the

SNACK FOOD ASSOCIATION

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I'd like to thank you for this opportunity to speak with you this morning. Many of us have a love/hate relationship with snack foods. We love to eat them, but we believe that we should avoid them. Rightly or wrongly, we also believe that they are generally not good for us -- that they are high in nutrients such as fat and calories that most of us are trying to cut down on, while being low in nutrients such as fiber that we are trying to get more of.

In considering the nutrition bill, which I will talk more about later, we did encounter some interesting arguments regarding snack foods. Many food companies were willing to accept some form of labeling, even if they did not agree with every aspect of our legislation. The one exception was the trade associations representing businesses that sell fruits and vegetables. They objected to any form of nutrition labeling for fruits and vegetables -- even simple signs or brochures limited to the most commonly eaten products.

Naturally, we asked why. After all, fruits and vegetables should do very well on the nutrition scorecard. Much to our surprise, the representatives of fruit and vegetable interests feared otherwise. They argue to us that fruits and vegetables would not do as well as most people thought as compared to candy bars and snack foods. I also am told that this explains why more and more snack food companies are voluntarily labeling candy bars and other snack food products -- snack foods might not be good for us, but in some cases they are not as bad as most people think.

I have to say that while I find the fruit and vegetable association's arguments very interesting, they convince me even more that we should require labeling on all food products. I don't know which businesses will win and which will lose; but I do know that consumers will win as they always do when they have more information upon which to base their decisions.

Before I discuss the legislation pending before Congress, I would like to go back to the 1980's and review for you how we got to where we are in terms of federal health and safety regulation.

Of course, in terms of federal health and safety regulation during the past decade, the most important event was the election of Ronald Reagan in 1980. Mr. Reagan came into office at a time when the federal government was the leader in insuring the safety

of foods, as well as most other consumer products. In most areas, the states could have set their own standards, but they didn't, largely because people assumed that the federal government was doing a good job.

But President Reagan entered office committed to deregulation, a codeword for an agenda that would lead to less enforcement of the laws administered by the primary health and safety agencies -- the Food and Drug Administration, the Environmental Protection Agency, and the Consumer Product Safety Commission. Budgets were cut. Essential scientific personnel fled government service.

In the early 1980's, concerted efforts were made to permanently change the laws. Those were the years when massive and debilitating rewrites of the food safety laws were proposed -- when industry was exerting enormous resources to repeal the Delaney clause. Fortunately, these efforts did not succeed, but threats to food safety appeared elsewhere.

Simultaneously, the Reagan Administration attacked health and safety initiatives on three other fronts. First, it abandoned a large number of important consumer initiatives that were in place. For example, despite years of study and planning, the FDA's program to include patient package inserts in all prescription

drugs was abandoned. The Administration refused to require mandatory labeling of salt in foods, and mandatory nutrition labeling wasn't even a possibility.

Second, the Reagan Administration instituted new levels of review which made it harder for agencies to issue regulations. The Office of Management and Budget was charged with reviewing all important regulations, and in the case of the Food and Drug Administration, the Secretary of the Department of Health and Human Services was given similar responsibilities. The resulting increase in bureaucracy was ironic for an administration supposedly committed to streamlining the federal government.

OMB and HHS review has also tilted toward industry. Over the past ten years, those agencies were responsible for: (1) delaying a regulation requiring that aspirin labeled for Reye's Syndrome, a rare but often fatal disease that was killing hundreds of children each year; (2) reversing the FDA's decisions to remove six cancer-causing color additives from the market; (3) holding up FDA's decision by ban raw milk in interstate commerce because of the risk of salmonella. In each of these cases, the FDA did not act until forced to do so by consumer-group initiated lawsuits or Congressional oversight.

The third action taken by the Reagan Administration was to

decrease law enforcement. During the early 1980's, enforcement actions at the FDA dropped by about 50%; enforcement of laws administered by OSHA experienced the same dramatic decline.

In the food area, this non-enforcement policy has had its most dramatic effect in the regulation of health claims. Prior to 1984, there were virtually no health claims on foods. The FDA considered a claim that a food would prevent or help treat a particular disease to be a drug claim, and therefore prohibited such claims unless a manufacturer submitted evidence for review and approval under the drug approval requirements in the Food, Drug and Cosmetic Act. But as a result of the new non-enforcement policy, this process was ignored, and health claims have begun proliferating to the point where today the situation is totally out of control.

I suspect that many people in this audience applauded the so-called Reagan revolution. That was a shorted sighted view, and there were probably others of you in the audience who held back your cheers -- recognizing that deregulation at the federal level could only lead to difficult times in the future. I would like to address two basic problem areas where deregulation has had a significant impact on industry.

First, the lack of enforcement places all the wrong pressures

on industry. Responsible companies that on their own would not make misleading, unsupported health claims are pressured by the marketplace to do so. As a result, the least responsible companies set the standard with which all others must compete. In 1990, we find ourselves in a situation where the legal prohibition on including inaccurate or unsupportable information on food labels is largely unenforced. The FDA -- the agency responsible for protecting consumers from this type of fraud -- has lost control of the marketplace.

Meanwhile, something very interesting and very predictable has also happened. Due in part to the legitimate concern arising from the EDB and ALAR contamination scares, consumers are demanding protection from their Government. They are demanding it from their state governments, as well as from the federal government. What is more, they are starting to get it.

At the state level, the most visible activity is in my own state of California. Several years ago, California enacted Proposition 65, which requires that food and other products containing carcinogens be labeled, unless the industry can demonstrate that there is no substantial risk to human health.

In the case of food in particular, it should not be necessary to label carcinogens. They should be banned. But where the

federal government is not doing its job in protecting the food supply, then labeling is a second-best alternative. Proposition 65 is not the ideal approach to food regulation, but it does reflect the frustration of citizens who had started believing their President when he said he would cutback the federal agencies responsible for health and safety regulation. After all, Californians knew President Reagan better than anyone else, so it's not surprising that they were the first to take him seriously.

In November, Californians will vote on the "Big Green" initiative. One of its provisions would phase out pesticides found by the Environmental Protection Agency to cause cancer. This is a more carefully focused approach, where the state relies on the federal government's scientific findings, but then adopts its own, tougher safety standard to protect its citizens. Early indications are that the initiative's prospects are excellent.

Meanwhile, the Attorney Generals in a number of states are acting to protect their citizens. They are bringing cases against food manufacturers for making false and misleading claims. Also, a number of localities have adopted ordinances to protect their citizens against pesticides.

I do not need to tell you that the State activity has

potential problems for industry. State laws may go in different directions. And it may be difficult for a company that markets its product nationally to comply with all the different State laws. Preemption of Proposition 65 is number 1 on the legislative agenda of the food industry. Anticipatory preemption of California's Big Green initiative is close behind.

It used to be that regulated industry had the argument that state regulation was unnecessary because the federal program was so strong. But President Reagan took that argument away, and in many areas we are a long way away from strong regulatory programs. When we get there, preemption of the States may be appropriate. Interestingly, it may also be unnecessary since that States won't have an incentive to act. But until we have a strong federal program, the States must be permitted to protect their citizens.

During this Congress, my Subcommittee has worked harder than ever to enact strong and enforceable federal laws regarding the regulation of foods.

We are currently working on initiatives to: (1) tighten the regulation of pesticides; (2) require the Food and Drug Administration to adopt a mandatory fish inspection program; and (3) require mandatory nutrition labeling of foods and prohibit unproven health claims.

Each of these laws would give consumers new, important protections. The pesticide legislation would prohibit the use of pesticides on foods unless the residue leaves a negligible risk, which is defined as a risk of less than one in a million and one that is not likely to cause any adverse health effects such as cancer. Under current law, the EPA weighs the economic benefits of a pesticide to industry against the risk of the pesticide to consumers.

The fish bill is a product of the times. Today consumers are eating more fish than ever. Yet federal programs to protect them from contaminated fish products are woefully inadequate.

In the past few months, both the Committee on Energy and Commerce and my Subcommittee have reported out a bill that would require the FDA to establish a comprehensive program for the regulation of fish. The agency would be required to adopt tight contamination standards and it would be given new enforcement authorities -- including the kind of inspection authorities that it has for prescription drugs, and new authority to impose civil penalties and to require a company to recall contaminated fish products.

Finally, I want to discuss the issue of nutrition labeling and health claims on food.

Yet another legacy of the Reagan/Bush decade is that the public has lost confidence in the truthfulness of food labeling. A poll recently released by the Washington Post concluded that "only 3 percent of Americans believe that food manufacturers never make misleading claims about the health benefits of their products." 60% of those surveyed believed that food statements were misleading either a lot or a fair amount.

There was a time in America when health claims of the type we see daily on store shelves were illegal. But today food products can boast the absence of cholesterol while showering the consumers with globs of saturated fat. We have so-called Lite desert products in which the only lite component is the color of the icing. Cooking oil is now said to reduce cholesterol. Oat bran has been added to donuts and potato chips.

Senator Howard Metzenbaum and I have introduced legislation to require mandatory nutrition labeling of most foods and to establish rules that would apply to health claims on foods. The nutrition labeling would be comprehensive, but not onerous.

Health claims would be tightly regulated by the Food and Drug Administration. First the agency would define terms such as "light" and "low." There would be a simplified petition procedure for using terms consistent with those defined by the Agency.

Second, disease claims -- such as fiber prevents cancer -- would be prohibited unless the FDA found that the connection between the disease and the claim was valid. And that approval would be based on the Agency's review of the scientific evidence. Our bill has adopted the Bush Administration's standard: there would have to be a "significant scientific agreement" as to the validity of the claim.

The legislation has deadlines for issuing federal regulations and, if adopted, would create a strong federal program. In line with the principles that I outlined earlier, the bill would preempt the States from adopting different laws with respect to nutrition labeling and health claims.

My staff has spent numerous hours meeting with the Grocery Manufacturers Association and other trade associations and companies that are interested in the bill. They have accommodated many concerns. Mr. Madigan, the ranking Republican on my Subcommittee, enthusiastically supports the bill because he believes that it is both important to consumers and fair to industry. Indeed the bill has strong support from both the Democrats and the Republicans on the Subcommittee and the Full Committee.

Its status is as follows. The bill has been reported out by

the Committee on Energy and Commerce in the House and by the Committee on Labor and Human Resources in the Senate. Floor action would be the next step in either chamber.

But there is still a problem, and that is preemption. I am not talking about preemption of nutrition labeling and health claims. As I have already said, the bill goes 100% of the way in preempting the States in the area of nutrition and health claims.

Instead the problem is preemption of Proposition 65 -- the California law requiring labeling of carcinogens. Even though Proposition 65 has nothing to do with nutrition or nutrition labeling, the Grocery Manufacturers Association has taken the position that it will attempt to defeat our nutrition bill unless its Proposition 65 preemption amendment is adopted.

On the other hand, the public has spoken quite clearly on these issues. People want nutrition labeling and they want careful regulation of health claims.

Members of Congress agree. Many members have indicated to me that they watch their diets. They want more nutrition information on the food they buy. Their personal experience allows them to understand why their constituents want the same.

I want to close by emphasizing that the GMA's strategy is a risky one. Most members understand that the GMA is holding the nutrition bill hostage over an issue that the bill was not designed to and does not address. I believe that we will prevail and that the bill will be enacted into law without a provision preemption Proposition 65.

And who knows, maybe the fruit and vegetable industry is correct. With full nutrition labeling, the sales of snack foods just might increase.

Thank you.